IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 4085 OF 1990

Canara Bank, a Bank constituted, established and functioning under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its Head Office at Bangalore and also amongst other branches, a branch office at Colaba, Bombay- 400 039. ... Plaintiffs.

V/s.

1. M/s.UKIRON INVESTMENTS PVT.LTD., a Company registered under the Companies Act, 1956, having its Registered Officer at Industrial Assurance Bldg., Churchgate, Bombay- 400 020.

2. Kiran S. Dahanukar, an Indian Inhabitant, a Director of Defendant No.1, residing at 4-A, Shree Sadan, M.K.Dahanukar Marg, Carmichael Road, Bombay- 400 026.

3. Mrs.Dolores L. Singh, an Indian Inhabitant, a Director of Defendant No.1, residing at Cujo Asha Colony, Juhu Tara Road, Bombay- 400 049. ... Defendants.

R.C.Dubey i/b. Sanjeev Kanchan & Co. for the plaintiff.

None for the defendants.

CORAM: V.C.DAGA, J.

DATED: 14th December,2007.

JUDGMENT :

. The plaintiff- Canara Bank ("Bank" for short) has filed this suit against defendants for the recovery of their outstanding dues in the sum of Rs.86,978.40 in loan A/c.No.LHM-3/87 and Rs.20,896.20 in loan A/c.DPN-15/87 together with future interest thereon from the date of suit till realisation.

The Facts :

2. The factual matrix reveal that on being approached by the defendants, the plaintiff- Bank sanctioned loan in the sum of Rs.50,000/- under A/c.No.LHM-3/87 on their executing promissory note in favour of the plaintiff- Bank signed by defendant Nos.2 and 3 who promised to pay the said amount with interest thereon @ 7.5% per annum above the Reserve Bank of India rate with a minimum of 17.5.% per annum compounded quarterly for value received. In addition to the said promissory note, two more documents were executed in consideration of having sanctioned loan to defendant No.1. In order to secure such financial facility, defendant Nos.2 and

3 executed deed of hypothecation dated 20th April, 1987 on behalf of defendant No.1, and hypothecated thereunder the machineries and equipments belonging to defendant No.1, the details of which are to be found in Exh.B annexed to the plaint. The defendant Nos.2 and 3 guaranteed re-payment of loan amount by executing letter of continuing guarantee on 20th April, 1987. The defendants have also acknowledged their liability of the said loan account No.LHM 3/87 by executing balance confirmation letter.

3. The plaintiff- Bank has also sanctioned additional loan facility in the sum of Rs.25,000/- in the A/c.No.DPN-15/87 at the request of the defendants. In consideration of having sanctioned the said loan facility, defendant Nos.2 and 3 executed promissory note on 20th April, 1987 for Rs.25,000/- in favour of the plaintiff- Bank for and on behalf of defendant No.1 and promised to pay the plaintiff- Bank the said sum of Rs.25,000/- with interest thereon @ 7.5% per annum above the Reserve Bank of India rate with a minimum of 17.5.% per annum compounded quarterly for value received. The said financial facility was also guaranteed by defendant Nos.2 and 3 by executing letter of continuing guarantee. The defendants have also acknowledged their liability in the sum of

Rs.35,849.00 on 5th February, 1990.

4. According to the plaintiff, all the defendants are jointly and severally liable to pay the outstanding dues of the Bank in both accounts.

5. According to the plaintiff, in spite of repeated demands the amounts were not paid by the defendants. Consequently, plaintiff- Bank was constrained to file present suit against the defendants.

6. On being served with writ of summons, defendant No.3 did not appear. With the result, suit came to be decreed against defendant No.3. However, defendant Nos.1 and 2 chose to appear and filed their written statement denying their liability.

Issues for Determination :

7. Considering rival pleading of the parties, issues were framed by this Court on 3rd October, 2007. The issues and my findings recorded thereon for the reasons recorded hereinafter are as under:

ISSUES	FINDINGS
1. Whether the Plaintiffs prove that at the request of the	Yes.

	Defendants loan of Rs.50,000/- was sanctioned to the defendant No.1?	
2.	Whether the Plaintiffs prove that the defendant No.2 on behalf of the defendant No.1 have executed Demand Promissory Note and have agreed to pay interest at the rate of 17.5% p.a. compounded quarterly ?	Yes.
3.	Whether the Plaintiffs prove that the Defendant No.2 has executed Letter of Guarantee to extend of Rs.75,000/- and have agreed to pay interest at the rate of 19.5.% p.a. ?	Yes.
4.	Whether the Plaintiffs prove that the defendant No.2 on behalf of defendant No.1 have acknowledged liability of Rs.72,604.40 on 5th February, 1990 ?	Yes.
5.	Whether the Plaintiffs prove that at the request of the defendants further a loan of Rs.25,000/- was sanctioned and granted to the defendants ?	Yes.
6.	Whether the Plaintiffs prove that the defendants have executed loan documents from time to time in security of the loan amount sanctioned and granted to the defendants ?	Yes.
7.	Whether the Plaintiffs prove that the defendants are liable to pray a sum of Rs.10,7874.60 with interest as prayed ?	Yes.
8.	Whether the Defendant Nos.1 and 2 prove that the suit is barred by limitation ?	No.
9.	Whether defendants prove that the Plaintiffs are claiming excess amount as and by way of interest?	No.

10.	Whether defendants prove that the plaintiffs have not given credit of the amount of the sale price of the sold shares?	No.
11.	Whether defendants prove that they are not liable to pay claim amount with interest to the Plaintiffs?	No.
12.	What order and cost ?	As per the final order

8. Pursuant to the aforesaid order dated 3rd October, 2007, the plaintiff was directed to file affidavit of evidence and documents. Accordingly, an affidavit in lieu of evidence in support of the suit claim together with original documents including extracts of accounts duly certified under the Bankers Books Evidence Act were filed by the plaintiff- Bank. All the documents were proved by the plaintiff through their affidavit. Nobody was present on behalf of the defendants; either to cross-examine the affiant or to challenge the legality or validity of the documents executed by defendant Nos.2 and 3 in favour of the plaintiff-Bank. Under these circumstances, evidence of the plaintiff together with documents went unchallenged.

9. The plaintiff- Bank has proved their claim together with their right to recover the amount with

interest as claimed. The plaintiff- Bank has also proved existing liability against the defendants and outstanding dues due and recoverable from the defendants on the basis of the extract of accounts duly certified under the Bankers Books Evidence Act.

10. There is no dispute that the defendants had approached the plaintiff- Bank and requested for loan under two different heads. It is also proved that under both accounts, the loan documents were executed by the defendants to borrow loan from the plaintiff- Bank. It is also proved that under both accounts, amounts were actually borrowed by the defendants and that the liability of the Bank has been acknowledged by all the defendants and that the Bank has to recover suit claim as set up in the plaint.

11. The suit claim is not barred by limitation either against defendant No.1 or against defendant No.2. The plaintiff has not claimed any excess amount by way of interest. The defendants since did not appear and failed to lead any evidence in order to discharge burden which was placed on them by virtue of issue Nos.8 to 11, I am constrained to hold that the defendants have to failed to prove the said issues, whereas the plaintiff has proved issues

Nos.1 to 7. As such, plaintiff- Bank is entitled to a decree in terms of the suit claim. Hence the following order:

ORDER

(i) The suit is decreed.

(ii) The defendant Nos.1 and 2 do jointly and severally pay Rs.1,07,874.60, with interest on the decretal amount i.e. suit claim calculated thereon from the date of suit till payment or part payment thereof at the rate of 12% per annum with costs.

(iii) Decree be drawn in terms of this order.

(V.C.DAGA, J.)